

9 Official Opinions of the Compliance Board 165 (2014)

- ◆ **EXCEPTIONS PERMITTING CLOSED SESSIONS – LEGAL ADVICE, § 10-508(a)(5) – WITHIN EXCEPTION**
 - ◆ DISCUSSION WITH TOWN ATTORNEY
- ◆ **EXCEPTIONS PERMITTING CLOSED SESSIONS – LITIGATION, § 10-508(a)(8) – WITHIN EXCEPTION**
 - ◆ DISCUSSION WITH COUNSEL AND LOBBYISTS REGARDING ADVANCING POSITION ALREADY ADOPTED PUBLICLY

*Topic headings correspond to those in the Opinions Index (2010 edition) at <http://www.oag.state.md.us/opengov/openmeetings/appf.pdf>

September 29, 2014

Re: Town of Chevy Chase
Jacob Bardin, Complainant

This is our third opinion on the subject of meetings that the Mayor and Town Council of Chevy Chase (“Council”) closed to address the implementation of the Town’s position on the transportation project known as the Purple Line. In the first opinion, issued on March 20, 2014, we found that, although the Council had the discretion under the Open Meetings Act to close a meeting to discuss competing proposals for services related to the Town’s advocacy of its position, the Council had not made the disclosures required by the Act. *See 9 OMCB Opinions 99 (2014).*¹ In the second opinion, issued on July 23, 2014, we found that the Council had properly closed a meeting to discuss legal matters and potential litigation with its lawyers and government relations consultants. *See 9 OMCB Opinions 127 (2014).*

Here, Complainant broadly alleges that the Council members have stated that they hold a “regular monthly status conference call” with the government relations firm with which the Town has contracted to advance the Town’s position on the Purple Line. He alleges that the Council held these meetings without giving notice to the public and without making the disclosures required by the Act. Like the complainant whose allegations we addressed in the second complaint, he alleges that “government relations” services are not legal services. The Town responds, and the

¹ Our opinions are available at <http://www.oag.state.md.us/Opengov/Openmeetings/board.htm>.

Town Attorney has confirmed to our staff, that, besides the meeting addressed in our second opinion, a quorum of the Council's members held three closed meetings to discuss the implementation of its opposition to the project. Those meetings occurred on January 8, February 12, and March 12, 2014. The Town has provided us with the open-session minutes that contain summaries of those closed sessions, each of which was held in conjunction with a properly-noticed open meeting. We do not have sealed minutes for these meetings.²

We will apply, without repeating, the principles set forth in 9 *OMCB Opinions* 127. Each meeting complained of here was attended by legal counsel and members of the firm described in our earlier opinion. Each meeting was closed to "consult with staff, consultants, or other individuals about potential litigation related to the Purple Line" and to "consult with counsel to receive legal advice" on various topics. From the summaries provided in the open-session minutes, we again conclude that the topics that Council discussed fell within the legal authority it claimed.

In conclusion, we find that the Council did not violate the Act in the ways alleged.

Open Meetings Compliance Board

Monica J. Johnson, Esquire
Wanda Martinez, Esquire
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² In our second opinion, where we addressed the Council's April 9, 2014, meeting, we disapproved of the Town's practice of not keeping a separate set of minutes of its closed sessions. See 9 *OMCB Opinions* 127, 131. Here, as there, the lack of minutes that detail the content of the closed-door discussion deprives us information that would be germane to our resolution of the complaint. The meetings complained of here pre-dated that opinion.